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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 131.

GEORGE AMORY SARGENT, SULLIVAN AMORY SARGENT, ELLEN BACON SARGENT AND MARY TURNER BURGESS, APPELLANTS,

vs.

THE MASSACHUSETTS HOSPITAL LIFE INSURANCE COMPANY AND HORACE BINNEY SARGENT, EXECUTOR OF LUCIUS MANLIUS SARGENT, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 18, 1884.

SUPREME COURT OF THE UNITED STATES.

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a *Transcript of Record.*

Circuit Court of the United States, District of Massachusetts. In Equity.

GEORGE AMORY SARGENT *et al.*, Complainants,
v.
MASSACHUSETTS HOSPITAL LIFE INSURANCE COMPANY *et al.*, Defendants.

1 UNITED STATES OF AMERICA, } ss.
Massachusetts District, }

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Thursday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and eighty-four.

Before the Honorable Horace Gray, associate justice, and the Honorable Thomas L. Nelson, district judge.

GEORGE AMORY SARGENT *et al.*, Complainants,
v.
MASSACHUSETTS HOSPITAL LIFE INSURANCE COMPANY, *et al.*, Defendants. } In Equity.

1a The bill of complaint in this cause was filed in the clerk's office on the eighth day of February, A. D. 1882, and was duly entered at the October term of this court, A. D. 1881, and is in the words and figures following:

1b *Bill of Complaint. Filed Feb.* 8, 1882.

To the honorable the judges of the circuit court of the United States for the district of Massachusetts:

George Amory Sargent, Sullivan Amory Sargent, Ellen Bacon Sargent, all of Newport, in the State of Rhode Island, and Mary Turner Burgess, wife of Thomas Burgess, of St. Albans, in the State of Vermont, bring this their bill against The Massachusetts Hospital Life Insurance Company, a corporation duly established under the laws of the Commonwealth of Massachusetts, and having its usual place of business in Boston, in said Commonwealth, **and Horace Binney Sargent, as he is executor of the will of Lucius Manlius Sargent.*

And thereupon your orators complain and say that they are the children of the late Lucius Manlius Sargent, Jr., and of Letitia S. Sargent, his widow, and that they are the only children of the said Lucius who survive him.

That the will of Lucius Manlius Sargent (the father of Lucius Manlius Sargent, Jr.), late of West Roxbury, which was duly proved June 29, 1867, contained the following provisions, to wit:

"I will and direct that twenty bonds of the United States of $1,000

* Words in italics added by amendment.

each, now in my possession, be sold as soon as may be after
2 my decease, and the avails paid over to the Massachusetts Hospital Life Insurance Company in trust to pay the interest thereof annually to Letitia S. Sargent, widow of Lucius Manlius Sargent, Jr., during her natural life, and the principal at her death to his children, share and share alike."

That Horace Binney Sargent, the executor under said will, in pursuance of said provision paid over to the Massachusetts Hospital Life Insurance Company, on Oct. 9, 1869, the sum of $23,947.60, the same being the proceeds of the sale of said bonds to be held and administered by said company under said trust; that the said company still holds the said funds in trust, and pays to the said Letitia interest thereon at the rate of four per cent. per annum; that the said company made an agreement with said executor on receiving said funds, a copy of which is hereto annexed, marked "A;" but your orators affirm and maintain that said executor had no authority to make any agreement or contract with said company varying from the terms of the trust created by said will, and they deny that their rights under said will can be in any way changed or affected by any agreement made by said executor which was not in strict conformity to the terms of said will.

That your orators have bought land in said Newport and have built a house thereon to be used as a homestead for the family, and have been obliged in so doing to borrow large sums of money at the rate of six per cent. per annum.

That on Jan. 11, 1882, the said Letitia S. Sargent conveyed, assigned, and transferred all her right, title, and interest in and to both income and principal in said fund to your orators, a copy of which assignment is hereto annexed, marked "B," and that your orators now are consequently the only persons who have or in any event can have any interest in or right to either income or principal of said fund.

That your orators, being thus entitled, desire a termination of said trust forthwith, and a payment over to them of the principal of said fund without waiting for the termination of the said life estate.

That your orators have furnished the said company with a copy of said assignment, and have demanded of said company a termination of the trust and a payment over to them forthwith of
3 said funds as aforesaid, but that the said company have wholly refused to recognize the right of your orators to ask a termination of the trust, and have refused to pay over the principal of said funds or any part thereof to your orators.

Wherefore your orators pray that said Massachusetts Hospital Life Insurance Company may be ordered and compelled by this honorable court to forthwith pay over to your orators all the principal of said fund of $23,947.60, deposited with them as aforesaid by Horace Binney Sargent, and all interest and accumulations due thereon, and that your honors will grant such other and further relief as the nature of the case requires and to your honors may seem meet.

And your orators further pray that a writ of subpœna may be granted to them, directed to said Massachusetts Hospital Life Insur

ance Company, thereby commanding said company to appear before this honorable court at a certain time and under a certain penalty therein to be named, and then and there to answer the premises and to perform and abide such directions and decrees therein as to this honorable court may seem meet.

MARY TURNER BURGESS.
THOMAS BURGESS.
GEORGE AMORY SARGENT.
ELLEN BACON SARGENT,
By SAM'L R. HONEY, *Att'y.*
SULLIVAN AMORY SARGENT.

MORSE & STONE,
Solicitors and of Counsel.

STATE OF RHODE ISLAND, ETC., } *ss:*
City and County of Newport, }

On this third day of February, 1882, before me personally appeared Sullivan Amory Sargent, and made oath that he has read the above bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

SAM'L R. HONEY,
Notary Public.

4 A.

No. 4058. Annuity in trust. (G.)

The Massachusetts Hospital Life Insurance Company, in consideration of the principal sum of twenty-three thousand nine hundred forty-seven dollars and sixty cents, received by them of Horace Binney Sargent, executor of the will of Lucius Manlius Sargent, deceased, late of West Roxbury, in the State of Massachusetts, in trust as hereafter mentioned, the receipt whereof is hereby acknowledged, do hereby promise and agree to and with the said executor and his successor in said office that the said company shall and will invest the same in bank or other stock or in real estate or place the same out at interest on mortgage or other security at the discretion of the directors, and that the said company shall and will yearly and every year during the natural life of Letitia S. Sargent (widow of Lucius M. Sargent, Junior), of West Roxbury, in the State of Massachusetts, pay or cause to be paid to the said Letitia, in yearly payments, on the first days of January in each and every year during the natural life of the said Letitia, the first payment to be made on the first day of January, 1871, the same rate of interest on said principal sum as the said company shall actually make and receive upon their capital stock paid in and the other property in their possession, including real estate, stocks of the United States, bank or other stocks, notes, bonds, and mortgages, after deducting all necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants), and all actual losses by bad debts or otherwise, not arising from the actual fault of the company or

their servants, and also half of one per centum for the expenses of their office and the labor, trouble, and responsibility of investing, taking care of, and managing said trust property; the said principal sum received of said executor to be invested and managed and the amount of the income thereof to be estimated, ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust, printed at the bottom; interest to commence Feb. 9, 1870.

5 And the said company, for the consideration aforesaid, further promise and agree to and with the said executor and his successors that in sixty days after the decease of the said Letitia they will assign, transfer, and pay the amount of the aforesaid principal sum (or such part thereof as shall not have been lost by bad debts or otherwise without the actual fault of said company or their servants), and all interest then due thereon at the time of her death, in real estate, stocks, notes, bonds, and mortgages belonging to said company, all, any, or either of them, at the pleasure and discretion of the directors, at the prices at which the same, respectively, shall stand charged in the books of the company at the decease of said Letitia, in the way and manner provided in said extract from said article, to said Horace Binney Sargent, executor as aforesaid, or to his successor in said office, to be paid over to the children of the said Lucius M. Sargent, Junior, deceased, share and share alike, such payment to the said executor or his successor to be in full discharge of said company, which is in no event to be responsible for the subsequent appropriation of the moneys so paid.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this ninth day of October, one thousand eight hundred and sixty-nine.

[5-ct. internal revenue stamp. Canceled Oct. 9, 1869.]

CYRUS. K. HALE, *Secretary.*
G. T. BIGELOW, *Actuary.*

Extract from the article on annuities in trust, referred to above:

The company will receive any sum of money or such stocks as they are authorized to hold at the prices which may be agreed upon, to be in trust for a given life or lives, to draw interest immediately or at any time which may be agreed upon by the parties, to be invested with the capital stock and other property and managed by the directors in the way they shall judge most advantageous, having always in view the safety of the capital rather than the greatness of the income. A regular interest account shall be kept by the company and adjusted annually of all the sums received and paid during the year on account of their capital stock, annuities, endowments, insurances, etc. Supposing the rate of interest to be six per cent, by comparing the sum that would be received at

6 this rate of interest with the income actually received that year the true rate of interest obtained by the company on all their property will be ascertained, and this rate is to be paid to the annuitants, deducting one-half per cent. per annum for the

expenses of the office and the trouble in managing the property; so that if the company get five and a half per cent. per annum they will allow five per cent. As the annual income cannot be accurately determined until the expiration of the year the directors will order the quarterly or other payments of interest to be made so as to pay as nearly as can be estimated the sum that may be due to the party, and once in five years, or oftener if it can be done conveniently, an accurate adjustment and payment of any surplus shall be made. If any annuitant should die during this interval his heirs are to be paid the interest due at the time of his death, and afterwards his proportion of such surplus, or an arbitrary adjustment may be made of the claim with the consent of the parties. If a premium be paid for bank or other stock (on account of the capital not being liable to reimbursement for a number of years) such premium must be deducted from the interest in annual portions, so that at the time of the reimbursement of the capital it may stand charged on the books of the company at par. On the contrary, if any stock is purchased below its par value and afterwards reimbursed at par the profit shall be added to the interest account in such manner and at such times as the directors may judge equitable.

Sixty days after the proof of the decease of a person in whose favor the annuity may be granted the capital put in trust shall be paid to the person legally authorized to receive it. This payment is to be made in money or stocks or property belonging to the company, at the pleasure of the directors, and at the prices charged on the books at the time of the decease of the party, giving what the directors shall consider an equitable share of those stocks which may be worth more, as well as those which may be worth less, than the charged prices, it being understood that the company shall not be obliged to transfer a part of every kind of their stocks, but that any one or more may be selected by the directors, always having it in view to give what they should consider a just proportion of all the property in possession of the company, and if the payment be made wholly or in part in money the company shall make such reasonable allowance for any increase or decrease in the price of the common property as the directors shall judge equitable.

Indorsed as follows:

No. 4058. Letitia S. Sargent. (G.)

I, the subscriber, acknowledge to have received of the Massachusetts Hospital Life Insurance Company the successive payments of this annuity at the times and in the sums expressed against
7 the signatures, respectively, for which duplicate receipts have been given on the policy and on the record:

No.	When due.	When paid.	Amount paid.	Signatures.
	Jan. 1, 1871	Jan. 2, 1871	Eleven hundred seventy-six dolls. $\frac{39}{100}$ ($1,176.39)	Letitia S. Sargent.
	Jan. 1, 1872	Jan. 2, 1872	Fifteen hundred thirty-one dolls. $\frac{1}{100}$ (($1,531.01)	Letitia S. Sargent.
	Jan. 1, 1873	Jan. 1, 1873	Fifteen hundred fifty-six dolls. $\frac{60}{100}$ ($1,556.60)	Andreas Blume, att'y.
	Jan. 1, 1874	Jan. 1, 1874	Fifteen hundred fifty-six dolls. $\frac{60}{100}$ ($1,556.60)	Andreas Blume, att'y.
	Jan. 1, 1075	Jan. 1, 1875	Fifteen hundred fifty-six dolls. $\frac{60}{100}$ ($1,556.60)	Andreas Blume, att'y.
	Jan. 1, 1876	Jan. 1, 1876	Fifteen hundred fifty-six dolls. $\frac{60}{100}$ ($1,556.60)	Andreas Blume, att'y.
	Jan. 1, 1877	Jan. 1, 1877	Fourteen hundred thirty-six dolls. $\frac{86}{100}$ ($1,436.86)	Andreas Blume, att'y.
	Jan. 1, 1878	Jan. 1, 1878	Eleven hundred ninety-seven dolls. $\frac{38}{100}$ ($1,197.38)	Andreas Blume, att'y.
	Jan. 1, 1879	Jan. 1, 1879	Ten hundred seventeen dolls. $\frac{77}{100}$ ($1,017.77)	Andreas Blume, att'y.
	Jan. 1, 1880	Jan. 1, 1880	Nine hundred fifty-seven dolls. $\frac{90}{100}$ ($957.90)	Andreas Blume, att'y.
	Jan. 1, 1881	Jan. 1, 1881	Nine hundred fifty-seven dolls. $\frac{90}{100}$ ($957.90)	Andreas Blume, att'y.
	Jan. 1, 1882	Jan. 2, 1882	Nine hundred fifty-seven dolls. $\frac{90}{100}$ ($957.90)	Andreas Blume, att'y.

8 B.

Whereas the will of Lucius Manlius Sargent, late of West Roxbury, which was duly proved June 29, 1867, contained the following provision, to wit:

"I will and direct that twenty bonds of the United States of one thousand dollars each, now in my possession, be sold as soon as may be after my decease and the avails paid over to the Massachusetts Hospital Life Insurance Company in trust to pay the interest thereof annually to Letitia S. Sargent, widow of Lucius M. Sargent, Junior, during her natural life, and the principal at her death to his children, share and share alike;" and

Whereas Horace Binney Sargent, the executor under said will, in pursuance of the above provision, paid over to the Massachusetts Hospital Life Insurance Company, on Oct. 9, 1869, the sum of twenty-three thousand nine hundred and forty-seven dollars and sixty cents ($23,947.60), to be by them held and administered under said trust; and

Whereas Lucius Manlius Sargent, Junior, left children surviving him, George Amory Sargent, Sullivan Amory Sargent, Mary Turner Sargent (now Mary Turner Burgess, wife of Thomas Burgess), and Ellen Bacon Sargent, all of whom are now alive and of age; and

Whereas the Massachusetts Hospital Life Insurance Company still holds said funds in trust, and pays to the said Letitia S. Sargent interest thereon at the rate of four per centum per annum; and

Whereas it is desired by all said parties in interest that the trust should be terminated and the principal paid over at once to the said children during the natural life of the said Letitia, and the said Letitia desires and has agreed to release all the right, title, and interest in and to the income and principal under said trust to said children in order to facilitate the termination of the trust as aforesaid:

Now, therefore, know all men by these presents that I, Letitia S. Sargent, widow of Lucius Manlius Sargent, Junior, in consideration of the premises and of ten thousand dollars to me paid by
9 George Amory Sargent, Sullivan A. Sargent, Ellen Bacon Sargent, all of Newport, in the State of Rhode Island, and Mary Turner Burgess, of St. Albans, in the State of Vermont, do hereby assign, transfer, and set over unto the said George Amory Sargent Sullivan A. Sargent, Ellen Bacon Sargent, and Mary Turner Burgess all the right, title, and interest of every name and nature which I may now have, or to which I may become entitled, in and to both the income (or interest) and principal of said fund now held by the Massachusetts Hospital Life Insurance Company:

To have and to hold to the said George Amory Sargent, Sullivan Amory Sargent, Ellen Bacon Sargent, and Mary Turner Burgess and their heirs, executors, administrators, and assigns to their own use and behoof forever.

In witness whereof I hereunto set my hand and seal this eleventh day of January, 1882.

LETITIA S. SARGENT. [L. S.]

In presence of—
SAM'L R. HONEY.

This cause was thence continued to the May term, A. D. 1882, when the following answer was filed:

Answer. (*Filed by Consent July* 7, 1882.)

The answer of the Massachusetts Hospital Life Insurance Company to the plaintiffs' amended bill.

This defendant, reserving all benefit of exception or otherwise which can be had to the plaintiffs' said bill, for answer thereto, says:

It admits that the plaintiffs are children of the late Lucius Manlius Sargent, Jr., and of Letitia S. Sargent, his widow, and the only children of said Lucius who survived him; that the will of Lucius Manlius Sargent, the elder, contained the clause set forth in said bill, and that Horace Binney Sargent, executor of said will, paid to the defendant the sum of $23,947.60, the proceeds of the bonds named in said clause of said will, and that in consideration thereof the defendant made the agreement set forth in said bill by the copy thereto annexed, marked "A."

10 And this defendant admits that said Letitia S. Sargent executed the assignment whereof a copy is annexed to said will, marked "B," and that the plaintiffs furnished the defendant with a copy thereof and demanded payment of a fund alleged by them to be held by this defendant by a notice and letter whereof a copy is hereto annexed, marked "1," but not otherwise, and that this defendant refused to recognize the right of the plaintiffs to make such demand and refused to pay over said fund so claimed.

And this defendant denies that it received said sum so paid to it by said executor to be held or administered by it upon any trust otherwise than is set forth in said agreement "A," or otherwise than upon the terms and conditions of said agreement. It denies that it had or is affected with notice of any trust affecting said sum of money, or of any want of authority in said executor to enter into said agreement, and, on the contrary, it alleges that the said executor had full power and authority to enter into said agreement with this defendant, and in so doing was acting in strict conformity with the terms of said will and in the proper execution of his duty under the same, and that said executor and the plaintiffs are bound by the terms of said agreement, and that this defendant is under no obligation to the plaintiffs except such as arises or may arise under the same.

And this defendant, further answering, says that it is a corporation established under the laws of the Commonwealth of Massachusetts by an act passed Feb. 24, 1818, which act is the charter of said corporation.

That by the said charter it has power "to contract for reversionary

payments, and generally to make all kinds of contracts in which the casualties of life and interest of money are principally involved, and to make, execute, and perfect such and so many contracts, bargains, agreements, policies, and other instruments as shall or may be necessary and as the nature of the case shall or may require."

That under such power conferred by its charter this defendant, in the conduct of its business, had, long prior to the death of said Lucius Manlius Sargent, the elder, and long prior to the date of his said will, adopted, established, and issued certain forms of contracts, entitled "annuities in trust," substantially in the form of the
11 agreement "A" made by it with said executor, whereby, upon such terms and conditions as are in said agreement set forth and not otherwise, it received moneys deposited with it and bound itself to invest and to account for and pay over the income and principal thereof, either at the expiration of a term of years fixed by said agreement or at the death of some person or persons named therein, but that it had never assumed in any such agreements the performance of any trust under any will or bound itself to the duties of a trustee in the management of any trust fund, nor by any contract or form of agreement by it established, adopted, or issued had agreed to make any of said contracts terminable or any of the payments under the same payable at the will of the parties beneficially interested in such contracts or payments.

That the course of business so adopted by this defendant and the form of contract by it established and issued and the terms and conditions thereof were well known to the public and to the testator, Lucius Manlius Sargent, at the time of making said will, and that it was the true intent and purpose of the clause of said will set forth in the plaintiffs' bill that the sum deposited with this defendant by the said executor should be deposited upon the terms of the said agreement "A" and not otherwise.

And this defendant, further answering, admits and avers that it has paid to the said Letitia S. Sargent, according to its promises in said agreement contained, on or about the first day of January in each year from the year 1871 to the year 1882, inclusive, interest upon said principal sum with it deposited by said executor, estimated, ascertained, and determined in the manner in said agreement stipulated; and it avers that the payments so made have in several of said years exceeded four per cent., and have averaged during the whole term more than four per cent. per annum; and it avers and claims that said Letitia S. Sargent has, by receiving such payments and otherwise, acquiesced in, ratified, and become a party to said agreement, and has become and is, and at the time of her said assignment and release the plaintiffs was, bound by the terms and conditions thereof, and that said Letitia S. could not and did not by such assignment or by any act of hers deprive the defendant of its right to hold said principal sum invested during her life accord-
12 ing to the terms of said agreement, and that the defendant is not bound to pay over or transfer said principal fund to the plaintiffs or to any other person during the life of said Letitia S., or otherwise than in the manner in said agreement stipulated.

All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct.

Wherefore it prays to be hence dismissed and for its costs.

MASSACHUSETTS HOSPITAL LIFE INSURANCE COMPANY,
By SAMUEL C. COBB, *Actuary.*

RUSSELL & PUTNAM,
Solicitors for Defendant.

I.

EQUITABLE BUILDING, BOSTON, *Jan.* 14, 1882.

Samuel C. Cobb, Esq., actuary Mass. Hosp. Life Ins. Co.

DEAR SIR: We are instructed by George Amory Sargent, Sullivan Amory Sargent, Mary Turner Sargent (now wife of Thomas Burgess), and Ellen Bacon Sargent, being all the children of the late Lucius Manlius Sargent, Junior, surviving at his death, to inform you that their mother, Letitia S. Sargent, has released to them her interest in the fund now held by your company under the will of Lucius Manlius Sargent for their benefit. We enclose a copy of the assignment, the original of which is in our possession. We are further instructed by the children, who are now the only persons interested in the principal and income of the fund, to request the payment of the same to them.

We remain, resp'y yours, MORSE & STONE.

13 This cause was thence continued to the October term, A. D. 1882, when the following answer was filed:

Answer. (*Filed Oct.* 24, 1882.)

The answer of Horace Binney Sargent, executor, to the plaintiffs' bill.

This defendant, reserving all benefit of exception, demurrer, or otherwise which can be had to the plaintiffs' said bill, for answer thereto, says:

He admits that the plaintiffs are the children of the late Lucius Manlius Sargent, Jr., and of Letitia S. Sargent, his widow, and that they are the only children of the said Lucius who survived him; that the will of Lucius Manlius Sargent, the elder, contained the provision set forth in said bill; that this defendant, the executor under said will, in pursuance of said provision, paid to the Massachusetts Hospital Life Insurance Company the sum of twenty-three thousand nine hundred and forty-seven dollars and sixty cents ($23,947.60), the proceeds of the sale of the bonds named in said will, the said proceeds to be held and administered by said company for the benefit of the said Letitia S. Sargent and the complainants in this bill. He admits that the said company made an agreement with him as executor on receiving said proceeds, as set forth in said bill by the copy hereto annexed, marked "A."

And this defendant denies that, as such executor, he had no authority to enter into the aforesaid agreement with said company, but affirms and maintains that he had full power and authority so to do, and that the said company and their actuary positively refused to accept said payment from this defendant as executor, except under this agreement, and unless this defendant would assent to the same, and that in making said agreement, as he did under the advice of counsel learned in the law, this defendant was acting of necessity and in strict conformity with the tenor of said will, and, in the proper execution of his duty under the same, was carrying out and giving effect to the true intent and purpose of the aforesaid provision; and of all this he submits himself to the judgment of this honorable court.

14 And this defendant, further answering, says that the Massachusetts Hospital Life Insurance Company is a corporation established under the laws of the Commonwealth of Massachusetts by an act passed Feb. 14, A. D. 1818, which act is the charter of said corporation; that by the said charter it has powers "to contract for reversionary payments, and generally to make all kinds of contracts in which the casualties of life and interest of money are principally involved, and to make, execute, and perfect such and so many contracts, bargains, agreements, policies, and other instruments as shall or may be necessary and as the nature of the case shall or may require;" that under such powers conferred by its charter said company, in the conduct of its business, had, long prior to the death of said Lucius Manlius Sargent, the elder, and long prior to the date of his said will, adopted, established, and issued certain forms of contracts, entitled "annuities in trust," substantially in the form of this the agreement made by and with this defendant, whereby, upon such terms and conditions as are in said agreement set forth and not otherwise, as he has reasonable grounds of belief, it received moneys deposited with it and bound itself to invest and to account for and pay over the income and principal itself, either at the expiration of a term of years fixed by said agreement or at the death of some person or persons named therein, but, as this defendant has reason to believe, said company had never assumed in any of such agreements the performance of any trust under any will, nor by any contract or form of agreement by it established, adopted, or issued had agreed to make any of said trusts or contracts terminable or any of the payments under the same payable at the will of the parties beneficially interested in such trusts, contracts, or payments; that the course of business so adopted by said company and the general nature of its instruments, policies, annuities, and agreements were familiarly and habitually known to the testator, Lulius Manlius Sargent, during forty years of intimate acquaintance and business relations with said company since the year 1827, and that howsoever the diminished rate of interest paid by said company or the necessities of the plaintiffs, as set forth in their bill, might modify his provision for the security of the fund were he now living it was the true intent and the purpose of the clause of his said will set forth in

15 the plaintiff's bill that the sum deposited with said company

by this defendant should be deposited on the terms of said agreement A and not otherwise; that the testator prescribed the deposit in general terms and not by any specific form of instrument, and this defendant, his executor, had no alternative but to deposit in accordance with the forms of business prescribed by the company, with whom, in general terms, the deposit was ordered to be made, for the purpose and true intent of securing to the said Letitia an assured income during her life, with the principal fund, after her decease, to the children of herself and the said Lucius, Jr.

And this defendaht, further answering, says that said Letitia S. Sargent has received from said company from the year 1871 to the year 1882 interest upon said principal sum with it deposited by this defendant, estimated, ascertained, and determined in the manner in said agreement stipulated; and this defendant avers and claims that the said Letitia S. Sargent, by receiving such payments and otherwise, has acquiesced in, ratified, and become a party to said agreement, and has become and is, and at the time of her assignment and release to the complainants was, bound by the terms and conditions of said agreement, and that said Letitia could not and did not, by any such assignment or by any act of hers, deprive the said company of its right to hold said principal sum invested during her life according to the terms of said agreement, and that no act of hers could deprive the said company of its right to now hold said principal sum invested during her life according to the terms of the clause of the testator's will cited by the defendants, even if there had been no agreement A.

All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct. Wherefore he prays to be dismissed and for his costs.

HORACE BINNEY SARGENT.

DISTRICT OF MASSACHUSETTS, *ss:*

On this nineteenth day of October, 1882, personally appeared the above Horace Binney Sargent and made oath that the foregoing statements were true, so far as made upon his own knowledge, and so far as made upon information and belief that he was informed believed them to be true.

Before me—

[SEAL.] WINSLOW WARREN,
U. S. Commissioner.

This cause was thence continued to the May term, A. D. 1883, when the following agreement was filed, namely:

Agreement. (*Filed June* 4, 1883.)

It is hereby agreed that this cause may be heard on the bill and answers and depositions, and on the fact, if material, that the agreement of which copy marked "Exhibit A" is annexed to the bill was delivered to Mrs. Letitia S. Sargent soon after the same was executed by defendants and was retained by her until she executed the as-

signment to the plaintiff set forth in said bill, when she delivered the same to the plaintiffs, who now hold the same.

MORSE & STONE,
Plaintiffs' Attorneys.
RUSSEL & PUTNAM,
Defendants' Attorneys.

This cause was thence continued to the October term, A. D. 1883, when the same is set down for hearing and fully heard by the Honorable Thomas L. Nelson, district —, sitting and holding said court. This cause was thence continued under advisement to this present term ; and now, to wit, July 15, 1884, it is ordered, adjudged, and decreed by the court that the bill of complaint in this cause be, and the same is hereby, dismissed, with costs for the defendants, taxed at —.

From this decree the complainants in open court claim an appeal to the Supreme Court of the United States, and give good and sufficient security that they will prosecute their said appeal to effect and answer all damages and costs if they fail to make good their plea, and said appeal is allowed accordingly.

A true record.

JOHN G. STETSON, *Clerk.*

16 The following is the evidence used in the hearing of said cause before said circuit court, namely :

Evidence for defendants, taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me, Winslow Warren, examiner.

Deposition of J. Ingersoll Bowditch.

BOSTON, *Feb.* 8, 1883.

Direct examination by WILLIAM G. RUSSELL, Esq., of counsel for defendants :

Int. 1. What is your name, age, residence, and place of business ?

Ans. J. Ingersoll Bowditch ; seventy-six ; Boston, Mass. ; place of business, 28 State street, Boston.

Int. 2. State how long and in what capacity have you been connected with the Massachusetts Hospital Life Insurance Company and your knowledge of its business.

Ans. I was a director from 1839 to 1880, and on the committee of finance from 1855 to 1880. I have been actuary *pro tem.* at several times ; I should say three years in all.

Int. 3. Who was the actuary and manager of said company before 1839 ?

Ans. My father was actuary from 1800 to 1838, when he died.

Int. 4. Are you familiar with the forms used in the business of the company and with the method in which its books and records of its contracts are kept?

Ans. Yes, sir; I am.

17 Int. 5. Please examine the books herewith shown you and state what they are and what they purport to contain.

(Counsel for plaintiffs objects to the evidence as immaterial and incompetent.)

Ans. There are forty-seven of them, and thirty-one of them are for general annuities, being form lettered "G." They commence Dec. 13, 1823, and extend to Oct. 1, 1875, inclusive. There are also five volumes, lettered "S. F.," which are called annuities in trust—S. F. signifying Strict Female. They extend from Oct. 1, 1823, to Oct. 1, 1882. There are also two volumes of annuities in trust lettered "S. M.," signifying Strict Male, commencing Nov. 19, 1824, and terminating Nov. 8, 1882; also one volume, endowment in trust, in the form marked "E. G.," signifying Endowment, General, from Nov. 1, 1823, to March, 1876; also one volume marked "E. S.," signifying Endowment Strict, from Sept. 15, 1823, to July 1, 1856; also one volume marked "D.," signifying Deferred Annuities, from Nov. 14, 1823, to Sept. 12, 1871; also four volumes, annuities and lives, marked "G," signifying General, from Oct. 14, 1823, to Jan. 3, 1883; also one volume marked "M.," signifying Male, from March 1, 1827, to July 1, 1862; also one marked "F.," signifying Female, from July 4, 1824, to Sept. 30, 1870.

They contain all the amounts received on deposit by this company during the periods which they severally represent, and also the original policies or contracts issued, the acknowledgment of the sums received, and the contracts as to the management, disposal, and return of those sums. They represent the entire business of the company, except the policies of life insurance, which are a small part of the business. The policies of each class are numbered consecutively. Upon the back of each is a form for receipt of the annuity or income coming due, and for the principal, when paid. On some of the forms there is a form for adding the interest to the principal—that is, upon the form provided for accumulating funds.

Int. 6. State whether or not in the business of said company, while you have been familiar therewith, any sums of money have been received on deposit the principal whereof was to be returned
18 or repaid, other than the sums represented and shown in said policies and contracts or otherwise than upon said contracts or policies.

(Objected to as immaterial and incompetent.)

Ans. No.

Int. 7. Examine the copy of policy herewith produced marked "A. W. W.," and the printed portion thereof entitled "Extract from the article on annuities in trust, referred to above," and state whether or not you are familiar with that form, and what you know in regard to it.

(Objected to as before.)

Ans. This has been on all the policies. I have known the form

ever since I have been familiar with the office. It is on all except the annuities on lives.

Int. 8. State whether or not the company has in its business, while you have been familiar with it, ever received deposits of money to be repaid except at a fixed period or at the termination of a life or lives.

(Objected to as before.)

Ans. I have never known of any.

Int. 9. Were you acquainted with the late Lucius Manlius Sargent, the elder; if so, how long did you know him before his decease?

Ans. I was well acquainted, from about 1823 or 1824 to the time of his death; it may have been later than 1824, but I knew him well.

Int. 10. State what is your knowledge, if any, of Mr. Sargent in connection with the Massachusetts Hospital Life Insurance Company.

(Objected to as before.)

Ans. I know that he was a very intimate friend of my father; he considered himself a relation, and used to be in and out of this office, and well acquainted.

Int. 11. Was he or not a depositor or policy holder in said company?

(Objected to as before.)

Ans. He was.

Int. 12. Examine the copy of policy herewith produced, marked "B. W. W.," and state whether it is a copy of the original policy held by said Sargent and of the receipts indorsed therein in the books of the company.

19

(Objected to as before.)

Ans. It appears to be a copy.

Int. 13. Who have succeeded your father as actuaries of the company, and how long have any of the present officers of the company been in office?

Ans. Joseph Tilden, Francis C. Lowell, Charles G. Loring, George T. Bigelow, and Samuel C. Cobb; all are deceased except Mr. Cobb, who has been here only since April, 1878. The receiver, Mr. Chamberlain, has been here since 1854, the secretary only since 1874; the previous secretaries are dead.

Cross-examination by R. M. MORSE, Jr., Esq., of counsel for complainants.

Cross-int. 14 (*de bene esse*). Has it not been the custom of this office whenever it has received moneys in pursuance of the provisions of any will to examine and inform itself of the form of such provisions before receiving such moneys?

Ans. I don't know that it has. I suppose sometimes wills have

been brought down to the office to show what the testator intended, but I can't say it has been the general practice.

J. INGERSOLL BOWDITCH.

Attest: WINSLOW WARREN,
U. S. Commissioner.

Deposition of James C. Braman.

BOSTON, *Feb.* 8, 1883.

Direct examination by WILLIAM G. RUSSELL, Esq., for counsel for defendants.

Int. 1. What is your name, age, residence, and occupation; how long have you held your present position, and what are its duties?

Ans. James C. Braman; fifty-four; Newton, Mass.; secretary of the Massachusetts Hospital Life Insurance Company; have held it since July, 1874. I have charge of the records of the corporation—the policy records and the account books, the ledger and journal, and the correspondence, under the supervision of the actuary.

Int. 2. What do you include in the term "policy records?"

(Objected to as immaterial and incompetent.)

Ans. The annuities in trust, the annuities on lives, and the life-insurance policies. Policy records are copies of the policies which are issued, and are duplicates, except as to the signatures. They are kept in separate volumes according to each class, and the volumes and policies in each volume are numbered consecutively according to date. On the back of each policy is a printed form of receipt for interest or income, to be signed by the parties at the time of receiving the amounts.

Int. 3. Will you produce the records of the corporation, and, referring to them, will you state when the by-laws were adopted, and will you give to the magistrate a copy of by-law No. 8?

(Objected to as immaterial and incompetent.)

Ans. Feb. 11, 1823; by-law 8 is as follows: "The board of president and directors, by themselves, or by committees appointed by them out of their board, shall have the general management, control, and direction of all the moneyed concerns and affairs of the corporation, more especially to decide upon the investment of the capital stock and of all moneys received for premiums, for the purchases of annuities, or reversionary payments, or for any other account whatever; to open and make policies of insurance on lives and to prescribe the form thereof, and the requisitions preparatory to making such insurances; to grant every species and description of annuities under all the variety of contingencies under which the same are granted in other countries; to make contracts for reversionary payments, and generally to do any and everything not repugnant to the conditions of the acts of incorporation or the laws

of the land which they deem fit and proper to carry into effect the powers granted by the acts of incorporation."

Int. 4. Will you, referring to the records of the corporation, state any votes relating to the forms of policies to be issued by the company?

(Objected to as before.)

21 Ans. At a meeting of directors, Aug. 18, 1823, voted that the blank forms for bonds, obligations, etc., as reported by Mr. Bowditch, be accepted and adopted, and that Mr. Bowditch and Mr. Hubbard be requested to have as many printed as they may think advisable.

At a meeting of directors, Oct. 26, 1823, voted that the form of an instrument of a deferred annuity in trust, this day laid before the board by the actuary, be accepted as one of the forms of annuities which may be granted by the company.

At a meeting of the directors, Nov. 7, 1825, voted that the form of the annuity in trust, G, as this day laid before the board, containing a clause for the withdrawal and paying off the capital at certain intervals, and another for the annual accumulation of the interest, with a few verbal alterations from the form heretofore used, be accepted as one of the forms of annuities which may be granted by the company.

Int. 5. State whether you have examined the records of the corporation and directors to ascertain whether any action hat been taken in regard to the forms of policies of the company between 1823 and 1875 and whether there has been any such action.

(Objected to as before.)

Ans. I have looked through the records and have not discovered any action.

Int. 6. Will you produce the books in your charge containing the copies of policies issued by the company from 1823 to 1875, except the policies of life insurance, and state what such books are and what they purport to contain?

(Objected to as before.)

Ans. I produce them all—forty-seven volumes in all. Some of them go beyond 1875. These records contain all the contracts for money deposited except for the purchase of life insurance, and contain also the receipts of the beneficiaries and parties entitled under them. Of these records volumes 1 to 31, inclusive, are records of annuities in trust, marked "G.," signifying General, from Dec. 13, 1823, to Oct. 1, 1875, inclusive. Volumes 1 to 5, marked "S. F.,"

22 signifying Strict Female, from Oct. 1, 1823, to November, 1882. Volumes 1 and 2, marked "S. M.," signifying Strict Male, from Nov. 19, 1824, to Nov. 8, 1882. One volume, marked "E. G.," signifying General Endowment in trust, from Nov. 1, 1823, to March, 1876, and volume marked, "E. S.," signifying Endowment in trust, strict form, from Sept. 15, 1823, to July 1, 1856; one volume, marked "D., signifying Deferred annuity in trust, from Nov. 14, 1823, to

Sept. 12, 1871; four volumes of annuities on lives, marked "G.," signifying General form, from Oct. 14, 1823, to Jan. 1, 1883; one volume, marked "M." signifying Male, from March 8, 1827, to July 1, 1862; one volume, marked "F.," signifying Female, from July 24, 1824, to Sept. 30, 1870.

Int. 7. Will you produce and annex to your deposition a copy of each of the printed forms of each of the nine classes of policies referred to in your last answer and state how long the same have been in use of the company and what, if any changes have been made thereon and at what time?

(Objected to as before.)

Ans. I produce copy of printed form of annuity in trust, G., marked "C, W. W.;" this was used from November, 1825 to 1843, and after that time the form produced marked "C, W. W." was used to 1875; they differ only in a few verbal alterations. I produce copy of form annuity in trust, S. F., marked "D, W. W.," which was in use from 1823 to 1840; the same printed form, without the interlineations and erasures, has been used from 1840 to 1875. I produce copy of form annuity in trust, S. M., marked "E, W. W.," which was in use from 1825 to 1871; the same form, without the interlineations and erasures, has been used from 1871 to 1875. I produce copy of form of endowment in trust, E. G., marked "F, W. W.," which has been used from 1823 to 1875. I produce copy of form E. S., strict endowment in trust, marked "G, W. W.," which has been used from 1823 to 1875. I produce copy of form D., deferred annuity in trust, marked "H, W. W.," which has been used from 1823 to 1875. I produce copy of form G., annuity of lives, marked "I, W. W.;" same form has been used from 1823 to 1875, except that during a portion of the period the form used had printed therein the clause which is here erased. I produce copy of form from volume marked "M.," annuity on life, marked "K, W. W.," and one form from vol-
23 ume marked "F.," which is marked "L, W. W.;" these have both been in use from 1827 to present time.

Int. 8. State whether any forms of contracts or policies or acknowledgment of moneys deposited with the company appear among the records or papers of the company other than those you have now produced and of which you have given copies.

(Objected to as before.)

Ans. I believe there are none.

Int. 9. State whether you have ever seen or known of any contract or policy issued by the company for the repayment of moneys deposited otherwise than at the expiration of a fixed period of time, or at the termination of some life or lives, or without the printed clause at the end of the forms produced, "extract from the article on annuities in trust, referred to above," down to 1875.

(Objected to as before.)

Ans. I have not.

Int. 10. State the amount of deposits in round numbers in the

Massachusetts Hospital Life Insurance Company in the several years 1864, 1867, 1869, 1882.

(Objected to as before.)

Ans. 1864, $9,000,000; 1867, $9,750,000; 1869, $10,460,000; 1882, $15,400,000.

Int. 11. Will you examine Exhibit A, W. W., annexed to the deposition of J. Ingersoll Bowditch in this cause, and state what the said exhibit is and what you know of the indorsements thereon?

(Objected to as before.)

Ans. It is a copy from the record of annuity in trust, G., No. 4056, issued to Letitia S. Sargent, widow of Lucius M. Sargent, Jr., of West Roxbury, Mass., of date Oct. 9, 1869. It bears a copy of the indorsements the originals of which appear upon the records at the office of the company.

(Counsel for plaintiffs admits the correctness of the copy and the genuineness of the signatures indorsed on the original and the competency of the parties signing as attorney for Mrs. Sargent, without, however, waiving any objection to the materiality of the evidence.)

Int. 12. Examine Exhibit B, W. W., annexed to the depo-
24 sition of J. Ingersoll Bowditch in this cause, and state what said exhibit is and what are the indorsements thereon.

(Objected to as before.)

Ans. It is a copy from the record of annuity in trust, G., No. 2279, for $5,000, issued to Lucius M. Sargent, of Roxbury, Mass., March 18, 1843, bearing also a copy of the original indorsements of the receipts of interest under said annuity, and of the final payment of principal and accrued interest. I produce the original record.

(Counsel for plaintiffs waives all objection to the annexing copies instead of the original record, reserving his objections to the competency of the testimony as above.)

Cross-examination by R. M. Morse, Jr., Esq., of counsel for complainants:

Cross-int. 13 (*de bene esse*). Have you made such examination of the books, records, and papers of the company as enables you to state positively that, with the exception of life insurance policies, no contract in reference to any deposit received by the company between the dates to which you have testified was made other than those of which copies are shown in the books you have produced?

Ans. I should not know where to look for any other contracts.

Cross-int. 14 (*de bene esse*). Have you examined the books of the company showing the receipts of cash deposits with the view of ascertaining the contracts made as to each of them, respectively?

Ans. No; those entries would be in the day book, according to the usage of the company, and those day books I have not gone through.

Cross-int. 15 (*de bene esse*). Is it any part of your duty to receive the deposits or make the contracts regarding them?

Ans. I have no part in making the contracts. I might receive the deposits under superior direction. I generally write out a memorandum of what the depositor wishes, and hand it to the receiver, whose duties are those of cashier. This memorandum indicates what the depositor wishes to be put into the policy, and, if the actuary approves, it is handed to the receiver to go in.

JAMES C. BRAMAN.

Attest: WINSLOW WARREN,
U. S. Commissioner.

Deposition of Henry P. Chamberlain.

BOSTON, *Feb.* 8, 1883.

Direct examination by WILLIAM G. RUSSELL, Esq., of counsel for defendants:

Int. 1. What is your name, age, residence, and occupation; how long have you been engaged in the Massachusetts Hospital Life Insurance Company, and in what capacity?

Ans. Henry P. Chamberlain; fifty-seven; Boston, Mass.; receiver of Massachusetts Hospital Life Insurance Company; came here in 1854, and was clerk to January, 1865, and have been receiver since.

Int. 2. What are your duties as receiver?

Ans. I receive all moneys and pay out and fill all checks, and make all the original entries, enter all the mortgages as original entries and also loans on stock, and make up annual accounts and statements to directors.

Int. 3. Are you familiar with the business and with the books of the company as the same have been kept since 1854?

Ans. Yes, sir; and they have been kept in same way ever since.

Int. 4. State what books are and have been kept by the company since you were receiver showing the contracts and terms in which deposits are received by it and whether the same are now produced before you.

(Objected to.)

Ans. There are books containing policies and contracts classified as follows: G., S. F., S. M., D., E. G.; these are all entitled annuities in trust; then there are life annuities, G., S. F., and S. M., and endowment general, E. G., and endowment strict, E. S. The books are all here.

Int. 5. State whether in the course of the business of the company all sums left on deposit in payment of annuities or on which income or interest is to be paid and the principal finally repaid are entered in these books and have been so since you were receiver.

Ans. Yes, sir.

Int. 6. Are you or not familiar with the forms of policies and contracts issued by the company since you have been in its service?

(Objected to.)

26 Ans. I am.

Int. 7. Examine Exhibit A, annexed to deposition of J. Ingersoll Bowditch, and state whether you have ever known of any contract or policy issued by the company whereby the principal sum deposited was to be repaid in which there was not inserted the printed clause shown in such exhibit entitled "Extract from the article on annuities in trust," referred to above.

(Objected to.)

Ans. No, sir.

Int. 8. State whether you have ever known any such policy or contract in which the principal sum was payable otherwise than at the expiration of a fixed term of years or at the termination of a life.

(Objected to.)

Ans. No, sir.

Int. 9. Did you know the late Lucius Manlius Sargent, Sr.; if so, how did you know him?

Ans. No, sir; I did not.

(No cross-examination.)

HENRY P. CHAMBERLAIN.

Attest: WINSLOW WARREN,
U. S. Commissioner.

27 A. W. W.

Annuity in trust.

No. 4058. (G.)

The Massachusetts Hospital Life Insurance Company, in consideration of the principal sum of * *twenty-three thousand nine hundred forty-seven* dollars and *sixty* cents, received by them of *Horace Binney Sargent, executor of the will of Lucius Manlius Sargent, deceased, late of West Roxbury,* in the State of *Massachusetts,* in trust as hereafter mentioned, the receipt whereof is hereby acknowledged, do hereby promise and agree to and with the said *executor and his successor in said office* [executors and administrators] that the said company shall and will invest the same in bank or other stock or in real estate or place the same out at interest on mortgage or other security, at the discretion of the directors, and that the said company shall and will yearly and every year during the natural life of *Letitia S. Sargent (widow of Lucius M. Sargent, Jr.), of West Roxbury,* in the State of *Massachusetts,* pay or cause to be paid to the said *Letitia,* in yearly payments, on the first days of January in each and every year during the natural life of the said *Letitia* [unless withdrawn, paid off, or added to the principal sum as provided below], the first payment to be made on the first day of *January, 1871*

* The written parts of this exhibit are printed in italics, and the parts erased are enclosed in brackets, thus [ ].

[next], the same rate of interest on said principal sum as the said company shall actually make and receive upon their capital stock paid in, and the other property in their possession, including real estate, stocks of the United States, bank or other stock, notes, bonds, and mortgages, after deducting all necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants) and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company or their servants, and also half of one per centum per annum for the expenses of their office and the labor, trouble, and responsibility of investing, taking care of, and managing said trust property; the said principal sum received of said *executor* to be invested and managed and the amount of the income thereof to be estimated, ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom; interest to commence *February 9, 1870.*

28 [And the said company do further promise and agree that in case the said —— —— should be living at the expiration of —— years from the date of this instrument —— shall have the right to withdraw the principal sum thus deposited, giving the company notice of such intention at least —— months before that time; and the said company also shall have the right to pay off the same, giving the like notice to the said —— ——. If no such notice should be given the deposit is to remain during another term of —— years (if the said —— —— so long live), and this right of withdrawing or paying off the principal sum shall be renewed at intervals of —— years as long as this trust shall continue. In case the principal sum should be thus withdrawn the payment is to be made by the company in the manner mentioned below, and with the deductions as herein mentioned.

It is also agreed that the said —— —— shall have liberty to have one or more of said annual payments added to said principal sum (in order to increase said principal sum), giving the company notice of such intention at least sixty days before the annual time of paying said interest.]

And the said company, for the consideration aforesaid, further promise and agree to and with the said *executor and his successors* [executors and administrators] that in sixty days after the decease of the said *Letitia* [(if not previously withdrawn or paid off)] they will assign, transfer, and pay the amount of the aforesaid principal sum (or such part thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company or their servants) and all interest then due thereon at the time of *her* death, in real estate, stocks, notes, bonds, and mortgages belonging to said company, all, any, or either of them, at the pleasure and discretion of the directors, at the prices at which the same, respectively, shall stand charged in the books of the company at the decease of said *Letitia*, in the way and manner provided in said extract from said article, to *said Horace Binney Sargent, executor as aforesaid, or to his successor in said office, to be paid over to the children of the said Lucius M. Sargent, Junior, deceased, share and share alike.*

Such payment to the said executor or his successor to be in full discharge of said company, which is in no event to be responsible for the subsequent appropriation of the moneys so paid.

[STAMP.]

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this *ninth* day of *October*, one thousand eight hundred and *sixty-nine*.

29

G. T. BIGELOW, *Actuary*.

CYRUS K. HALE, *Secretary*.

Extract from the Article on Annuities in Trust Referred to Above.

MEMORANDUM.—This "Extract from the article on annuities in trust" and the indorsements on this Exhibit A, being already in print on pages 5, 6, and 7 of this record, are not here reprinted, reference therefor being made to said pages 5, 6, and 7.

J. G. S., *Clerk*.

B. W. W.

Annuity in trust.

No. 2279. (G.)

The Massachusetts Hospital Life Insurance Company, in consideration of the principal sum of **five thousand dollars* and —— cents, received by them of *Lucius M. Sargent, of Roxbury*, in the State of *Massachusetts*, in trust as hereafter mentioned, the receipt whereof is hereby acknowledged, do hereby promise and agree to and with the said *Lucius, his* executors and administrators, that the said company shall and will invest the same in bank or other stock, or in real estate, or place the same out at interest on mortgage or other security at the discretion of the directors, and that the said company shall and will yearly and every year during the natural life of *said Lucius M. Sargent, of Roxbury*, in the State of *Massachusetts*, pay or cause to be paid to the said *Lucius*, in yearly payments, on the first days of January in each and every year during the natural life of the said *Lucius* (unless withdrawn, paid off, or added to the principal sum as provided below), the first payment to be made on the first day of January next, the same rate of interest on said principal sum as the said company shall actually make and receive upon their capital stock paid in and the other property in their possession, including real estate, stocks of the United States, bank or other stock, notes, bonds, and mortgages, after deducting all necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants), and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company or their servants, and also half of one per centum per annum for the expenses of their office, and the labour, trouble, and responsibility

* The written parts of this exhibit are printed in italics.

of investing, taking care of, and managing said trust property; the said principal sum received of said *Lucius* to be invested and managed and the amount of the income thereof to be estimated ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom; interest to commence *May 18*, 1843.

And the said company do further promise and agree that in case the said *Lucius* should be living at the expiration of *five* years from the date of this instrument *he* shall have the right to withdraw the principal sum thus deposited, giving the company notice of such intention at least *six* months before that time; and the said company also shall have the right to pay off the same, giving the like notice to the said *Lucius*. If no such notice should be given the deposit is to remain during another term of *five* years (if the said *Lucius* so long live), and this right of withdrawing or paying off the principal sum shall be renewed at intervals of *five* years as long as this trust shall continue. In case the principal sum should be thus withdrawn the payment is to be made by the company in the manner mentioned below, and with the deductions as herein mentioned.

It is also agreed that the said *Lucius* shall have liberty to have one or more of said annual payments added to said principal sum (in order to increase said principal sum), giving the company notice of such intention at least sixty days before the annual time of paying said interest.

And the said company, for the consideration aforesaid, further promise and agree to and and with the said *Lucius M. Sargent, his* executors and administrators, that in sixty days after the decease of the said *Lucius* (if not previously withdrawn or paid off) they will assign, transfer, and pay the amount of the aforesaid principal sum (or such part thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company or their servants) and all interest then due thereon at the time of *his* death, in real estate, stocks, notes, bonds, and mortgages belonging to said company, all, any, or either of them, at the pleasure and discretion of the directors, at the prices at which the same, respectively, shall stand charged in the books of the company at the decease of said *Lucius*, in the way and manner provided in said extract from said article, to *his son, Horace Binney Sargent, his executors or administrators.*

In witness whereof the said Massachasetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this *eighteenth* day of *March*, one thousand eight hundred and *forty-three.*

JOSEPH TILDEN, Actuary.

MOSES L. HALE, Secretary.

Extract from the Article on Annuities in Trust Referred to Above.

MEMORANDUM.—This "Extract from the article on annuities in trust," being already in print on pages 5 and 6 of this record, is not here reprinted, reference therefor being made to said page 5 and 6.

J. G. S., *Clerk.*

Indorsed as follows:

I, the subscriber, acknowledge to have received of the Massachusetts Hospital Life Insurance Company the successive payments of this annuity, at the times and in the sums expressed against the signatures, respectively, for which duplicate receipts have been given on the policy and on the record.

No.	When due.	When paid.	Amount paid.		Signatures.
1	*Jan.* 1, 1844	*Jan.* 5, 1844	*One hundred seventy-one dollars,* $\frac{78}{100}$,	171.78	*L. M. Sargent*
2	*Jan.* 1, 1845	*Jan.* 4, 1845	*Two hundred seventy-five dollars,*	275	*L. M. Sargent*
3	*Jan.* 1, 1846	*Jan.* 13, 1846	*Two hundred fifty dollars,*	250	*L. M. Sargent*
4	*Jan.* 1, 1847	*Jan.* 6, 1847	*Two hundred fifty dollars,*	250	*L. M. Sargent*
5	*Jan.* 1, 1848	*Jan.* 3, 1848	*Two hundred fifty dollars,*	250	*L. M. Sargent*

Princ. sum, Jan. 1, 1848	5,000	
Int. Jan. 1 to 18 *March*, 1848, @ 5%	52	59
	$5,052	59

BOSTON, *March* 18, 1848.

Received of the Massachusetts Hospital Life Insurance Company *five thousand and fifty-two* dollars and *59* cents in full for all demands for principal sum, interest, and reserved interest on this policy.

In witness whereof this receipt and a duplicate thereof have been signed on the original and on the record.

$5,052.59.

L. M. SARGENT,
HOR. BINNEY SARGENT.

Attest: *SAMUEL WHITE.*

April 1, 1848.—The original policy produced, cancelled.
HENRY CODMAN, Committee.

32 C. W. W.

Annuity in trust.

The Massachusetts Hospital Life Insurance Company, in consideration of the principal sum of —— dollars and — cents, received by them of —— ——, in the State of ——, in trust as hereafter mentioned, the receipt whereof is hereby acknowledged, do hereby promise and agree to and with the said —— ——, executors and administrators, that the said company shall and will invest the same in bank or other stock or in real estate or place the same out at interest on mortgage or other security, at the discretion of the directors, and that the said company shall and will yearly and every year during the natural life of —— ——, of ——, in the State of ——, pay or cause to be paid to the said —— ——, in —— yearly payments, on the first days of January, ——, in each and every year during the natural life of the said —— —— (unless withdrawn, paid off, or added to the principal sum as provided below), the first payment to

be made on the first day of —— next, the same rate of interest on said principal sum as the said company shall actually make and receive upon their capital stock paid in, and the other property in their possession, including real estate, stocks of the United States, bank or other stock, notes, bonds, and mortgages, after deducting all necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants) and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company or their servants, and also half of one per centum per annum for the expenses of their office and the labour, trouble, and responsibility of investing, taking care of, and managing said trust property; the said principal sum received of said —— —— to be invested and managed and the amount of the income thereof to be estimated, ascertained, and determined by the directors of the said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom; interest to commence ——, 18—.

And the said company do further promise and agree that in case the said —— —— should be living at the expiration of —— years from the date of this instrument shall have the right to withdraw the principal sum thus deposited, giving the company notice of such in-
33 tention at least sixty days before that time; and the said company also shall have the right to pay off the same, giving the like notice to the said —— ——. If no such notice should be given the deposit is to remain during another term of —— (if the said —— —— so long live), and this right of withdrawing or paying off the principal sum shall be renewed at intervals of —— years so long as this trust shall continue. In case the principal sum shall be thus withdrawn the payment is to be made by the company in the manner mentioned below and with the deductions as herein mentioned.

It is also agreed that the said —— —— shall have liberty to have one or more of said annual payments added to said principal sum (in order to increase said principal sum), giving the company notice or such intention at least thirty days before the annual time of paying said interest.

And the said company, for the consideration aforesaid, further promise and agree to and with the said —— ——, executors and administrators, that in sixty days after the decease of the said —— —— (if not previously withdrawn or paid off) they will assign, transfer, and pay the amount of the aforesaid principal sum (or such part thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company or their servants) and all interest then due thereon at the time of — death, in real estate, stocks, notes, bonds, and mortgages belonging to said company, all, any, or either of them, at the pleasure and discretion of the directors, at the prices at which the same, respectively, shall stand charged on the books of the company at the decease of said —— —— in the way and manner provided in said extract from said article to —— ——.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empow-

ered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and twenty —.

—— ——, *Actuary.*

—— ——, *Secretary.*

Extract from the Article on Annuities in Trust Referred to Above.

MEMORANDUM.—This "Extract from the article on annuities in trust," being already in print in pages 5 and 6 of this record, is not here reprinted, reference therefor being made to said pages 5 and 6.

J. G. S., *Clerk.*

34 C'. W. W.

Annuity in Trust.

No. —.

The Massachusetts Hospital Life Insurance Company, in consideration of the principal sum —— dollars and — cents, received by them of —— ——, in the State of ——, in trust as hereafter mentioned, the receipt whereof is hereby acknowledged, do hereby promise and agree to and with the said —— ——, executors and administrators, that the said company shall and will invest the same in bank or other stocks or in real estate or place the same out at interest on mortgage or other security, at the discretion of the directors, and that the said company shall and will yearly and every year during the natural life of —— ——, in the State of ——, pay or cause to be paid to the said —— ——, in —— yearly payments, on the first days of January, ——, in each and every year during the natural life of the said —— —— (unless withdrawn, paid off, or added to the principal sum as provided below), the first payment to be made on the first day of —— next, the same rate of interest on said principal sum as the said company shall actually make and receive upon their capital stock paid in, and the other property in their possession, including real estate, stocks of the United States, bank or other stock, notes, bonds, and mortgages, after deducting all necessary expenses and charges (excepting office rent and the salary of the company's officers and servants) and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company or their servants, and also half of one per centum per annum for the expenses of their office, and the labor, trouble, and responsibility of investing, taking care of, and managing said trust property; the said principal sum received of said —— —— to be invested and managed, and the amount of the income thereof to be estimated, ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom; interest to commence ——, 18—.

And the said company do further promise and agree that, in case the said —— —— should be living at the expiration of —— years from the date of this instrument, —— shall have the right to withdraw the principal sum thus deposited, giving the company notice

of such intention at least —— months before that time; and the said company also shall have the right to pay off the same, giving the like notice to the said —— ——. If no such notice should be given the deposit is to remain during another term of ——
35 years (if the said —— —— so long live), and this right of withdrawing or paying off the principal sum shall be renewed at intervals of — years as long as this trust shall continue. In case the principal sum should be thus withdrawn the payment is to be made by the company in the manner mentioned below and with the deductions as herein mentioned.

It is also agreed that the said —— —— shall have liberty to have one or more of said annual payments added to said principal sum (in order to increase said principal sum), giving the company notice of such intention at least sixty days before the annual time of paying said interest.

And the said company, for the consideration aforesaid, further promise and agree to and with the said —— ——, executors and administrators, that in sixty days after the decease of the said —— —— (if not previously withdrawn or paid of) they will assign, transfer, and pay the amount of the aforesaid principal sum (or such part thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company or their servants) and all interest then due thereon at the time of — death, in real estate, stocks, notes, bonds, and mortgages belonging to said company, all, any, or either of them, at the pleasure and discretion of the directors, at the prices at which the same, respectively, shall stand charged in the books of the company at the decease of the said —— ——, in the way and manner provided in said extract from said article, to —— ——.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and —.

—— ——, *Actuary.*

—— ——, *Secretary.*

Extract From the Article on Annuities in Trust Referred to Above.

MEMORANDUM.—This "Extract from the article on annuities in trust," being already in print on pages 5 and 6 of this record, is not here reprinted, reference therefor being made to said pages 5 and 6.

J. G. S., *Clerk.*

D. W. W.

Annuity in trust.

No. —. (S. F.)

The Massachusetts Hospital Life Insurance Company, in consideration of the principal sum of —— dollars *[and —
36 cents], received by them of —— ——, in the State of ——, in trust as hereafter mentioned, the receipt whereof is hereby

* Parts erased are enclosed in brackets, thus [ ].

acknowledged, do hereby promise and agree to and with the said —— —— executors and administrators, that the said company shall and will invest the same in bank or other stock or in real estate or place the same out at interest on mortgage or other security, at the discretion of the directors, and that the said company shall and will yearly and every year during the natural life of —— ——, in the State of ——, pay or cause to be paid to the said —— ——, in — [yearly] payments on the [first] days of [January] ——, in each and every year, during the natural life of the said —— —— (upon her separate order and receipt, to be dated on or subsequent to the several days on which the said several payments shall fall due, for her separate use, free from all debts, control, or interference of any husband she now has or may hereafter have, which annuity and principal sum are both hereby declared to be inalienable by the respective grantees thereof), the first payment to be made on the [first] day of —— next, the same rate of interest on said principal sum as the said company shall actually make and receive upon their capital stock paid in, and the other property in their possession, including real estate, stocks of the United States, bank or other stock, notes, bonds, and mortgages, after deducting all necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants) and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company or their servants, and also half of one per centum per annum for the expenses of their office and the labor, trouble, and responsibility of investing, taking care of and managing said trust property; the said principal sum received of said —— —— to be invested and managed and the amount of the income thereof to be estimated, ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom.

[Interest to commence ——, 18—.]

And the said company, for the consideration aforesaid, further promise and agree to and with the said —— —— executors and administrators, that in sixty days after proof of the decease of the said —— —— they will assign, transfer, and pay the amount of the aforesaid principal sum (or such part thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company or their servants) and all interrst then due thereon at the time of —— death, in real estate, stocks, notes, bonds, and mortgages belonging to said company, all, any, or either of them, at the pleasure
37 and discretion of the directors, at the prices at which the same, respectively, shall stand charged in the books of the company at the decease of said —— ——, in the way and manner provided in said extract from said article, to —— ——.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and ——.

—— ——, *Actuary.*

—— ——, *Secretary.*

Extract from the Article on Annuities in Trust Referred to Above.

MEMORANDUM.—This "Extract from the article on annuities in trust," being already in print on pages 5 and 6 of this record, is not here reprinted, reference therefor being made to said pages 5 and 6.

J. G. S., *Clerk.*

E. W. W.

Annuity in trust.

No. —. (S. M.)

The Massachusetts Hospital Life Insurance Company, in consideration of the principal sum of —— dollars *[and —— cents], received by them of —— ——, in the State of ——, in trust as hereafter mentioned, the receipt whereof is hereby acknowledged, do hereby promise and agree to and with the said —— ——, executors and administrators, that the said company shall and will invest the same in bank or other stock or in real estate or place the same out at interest on mortgage or other security, at the discretion of the directors, and that the said company shall and will yearly and every year during the natural life of —— ——, in the State of ——, pay or cause to be paid to the said —— ——, in —— [yearly] payments on the [first] days of [January] —— in each and every year during the natural life of the said —— —— (upon —— separate order and receipt, to be dated on or subsequent to the several days on which the said several payments shall fall due which annuity and principal sum are both hereby declared to be inalienable by the respective grantees thereof, and not subject to their debts or control), the first payment to be made on the first day of —— next, the same rate of interest on said principal sum as the said company shall actually make and receive upon their capital stock paid in, and the other property in their possession, including real estate, stocks of the United States, bank or other stock, notes, bonds, and mortgages, after deducting all necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants) and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company or their servants, and also half of one per centum per annum for the expenses of their office and the labor, trouble, and responsibility of investing, taking care of, and managing said trust property; the said principal sum received of said —— —— to be invested and managed and the amount of the income thereof to be estimated, ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom.

38

[Interest to commence ——, 18—.]

And the said company, for the consideration aforesaid, further promise and agree to and with the said —— ——, executors and administrators, that in sixty days after proof of the decease of the said —— —— they will assign, transfer, and pay the amount of the

* Parts erased are enclosed in brackets, thus [ ].

aforesaid principal sum (or such part thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company or their servants) and all interest then due thereon at the time of —— death, in real estate, stocks, notes, bonds, and mortgages belonging to said company, all, any, or either of them, at the pleasure and discretion of the directors, at the prices at which the same, respectively shall stand charged in the books of the company at the decease of said —— ——, in the way and manner provided in said extract from said article, to —— ——.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and ——.

—— ——, *Actuary.*

—— ——, *Secretary.*

Extract from the Article on Annuities in Trust Referred to Above.

MEMORANDUM.—This "Extract from the article on annuities in trust," being already in print on pages 5 and 6 of this record, is not here reprinted, reference therefor being made to said pages 5 and 6.

J. G. S., *Clerk.*

39 F. W. W.

Endowment in trust.

No. —. (E. G.)

The Massachusetts Hospital Life Insurance Company, in consideration of —— dollars, received of —— ——, of ——, in the State of ——, in trust as hereafter mentioned, the receipt whereof is hereby acknowledged, do promise and agree to and with the said —— ——, executors and administrators, that said company shall and will invest said principal sum in bank or other stock or in real estate or place and keep the same out at interest on mortgage or other security, at the discretion of the directors, and that they shall and will allow the same income or rate of interest thereon as they shall actually make and receive upon their capital stock paid in, and the other property in their possession, including real estate, stocks, notes, bonds, and mortgages, after deducting necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants) and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company or their servants; also one-half of one per cent. per annum for the expenses of the office and the labour, trouble, and responsibility of investing, taking care of, and managing said trust property; the said principal sum received of said —— —— to be invested and managed and the amount of the interest and income thereof to be estimated, ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom.

And the said company do further promise and agree to and with the said —— ——, executors and administrators, that they will

cause the income and interest of said principal sum to be computed from the — day of —— next following the date of this instrument, up to the thirty-first day of December next ensuing, and the amount thereof to be ascertained and determined in manner aforesaid and to be added to the said principal sum, which total shall constitue a new capital, to bear such interest as aforesaid the year next ensuing, and that the said company will, on the last day of that same year, and of each and every succeeding year until —— shall —— attain the age of —— years, if he so long live, cause the income and interest of the capital for the year last preceding (consisting of said principal sum and the accumulation of interest thereon), to be ascertained as aforesaid and added to said capital, to constitute a new capital for the year next ensuing, meaning to allow compound interest at the rate aforesaid upon the said principal sum until the said —— shall attain the age of —— years, if he so long shall live; and that upon —— attaining the age of ——, which will be on the — day of ——, one thousand eight hundred and ——, the said company shall and will immediately assign, transfer, and pay to said —— —— the whole capital, consisting of said principal sum (or so much thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company) and the interest accumulated thereon, ascertained and added thereto as aforesaid, and also the interest which may then have accrued for any portion of a year, in real estate, stocks, notes, bonds, or mortgages belonging to said company, any or either of them, at the prices the same, respectively, shall stand charged in the books of the company, and in such of them or such proportions of them as the directors shall think just and equitable; and if the said —— —— should die before —— attaining the age of —— years then and in that case the said company shall and will, in sixty days after notice thereof, pay in like property, at prices and in proportions to be ascertained as aforesaid, the whole of said principal sum (or so much thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of the company), and the interest then accumulated thereon, ascertained and computed as aforesaid, up to the time of the death of the said —— ——, to ——.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and twenty —.

—— ——, *Actuary.*

—— ——, *Secretary.*

Extract from the Article on Annuities in Trust Referred to Above..

MEMORANDUM.—This "Extract from the article on annuities in trust," being already in print on pages 5 and 6 of this record, is not here reprinted, reference therefor being made to said pages 5 and 6.

J. G. S., *Clerk.*

G. W. W.

Endowment in trust.

No. —. (E. S.)

The Massachusetts Hospital Life Insurance Company, in consideration of —— dollars, received of —— ——, of ——, in
41 the State of ——, in trust as hereinafter mentioned, the receipt whereof is hereby acknowledged, do promise and agree to and with the said —— ——, executors and administrators, that said company shall and will invest said principal sum in bank or other stock or in real estate, or place and keep the same out at interest on mortgage or other security, at the discretion of the directors, and that they shall and will allow the same income or rate of interest thereon as they shall actually make and receive upon their capital stock paid in and the other property in their possession, including real estate, stocks, notes, bonds, and mortgages, after deducting necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants) and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company of their servants; also one-half of one per cent. per annum for the expenses of the office, and the labour, trouble, and responsibility of investing, taking care of, and managing said trust property; the said principal sum received of said —— —— to be invested and managed and the amount of the interest and income thereof to be estimated, ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom.

And the said company do further promise and agree to and with the said —— ——, executors and administrators, that they will cause the income and interest of said principal sum to be computed from the — day of —— next following the date of this instrument, up to the thirty-first day of December next ensuing, and the amount thereof to be ascertained and determined in manner aforesaid, and to be added to the said principal sum, which total shall constitute a new capital, to bear such interest as aforesaid the year next ensuing, and that the said company will on the last day of that same year, and of each and every succeeding year, until —— shall —— attain the age of —— years, if he so long live, cause the income and interest of the capital for the year last preceding (consisting of said principal sum and the accumulation of interest thereon), to be ascertained as aforesaid and added to said capital, to constitute a new capital for the year next ensuing, meaning to allow compound interest at the rate aforesaid upon the said principal sum until the said —— shall attain the age of —— years, if he so long live; and that upon —— attaining the age of —— years, which will be on the — day of ——, one thousand eight hundred and ——, the said company
shall and will immediately assign, transfer, and pay to said
42 —— —— the whole capital, consisting of said principal sum (or so much thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company) and the interest accumulated thereon, ascertained and added thereto as afore-

said, and also the interest which may then have accrued for any portion of a year in real estate, stocks, notes, bonds, or mortgages belonging to said company, any or either of them, at the prices the same, respectively, shall stand charged in the books of the company, and in such of them or such proportions of them as the directors shall think just and equitable; and if the said —— —— should die before —— attaining the age of — years, then and in that case the said company shall and will, in sixty days after due notice thereof, pay in like property, at prices and in proportions to be ascertained as aforesaid, the whole of said principal sum, or so much thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of the company, and the interest then accumulated thereon, ascertained and computed as aforesaid, up to the time of the death of the said —— ——, to ——.

It is further hereby agreed and declared that this endowment is inalienable by the said —— —— or —— guardian.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract, this — day of ——, one thousand eight hundred and twenty.

—— ——, *Actuary.*

—— ——, *Secretary.*

Extract from the Article on Annuities in Trust Referred to Above.

MEMORANDUM.—This "Extract from the article on annuities in trust," being already in print on pages 5 and 6 of this record, is not here reprinted, reference therefor being made to said pages 5 and 6.

J. G. S., *Clerk.*

H. W. W.

Deferred annuity in trust.

No. —. (D.)

The Massachusetts Hospital Life Insurance Company, in consideration of ——, received of —— ——, of ——, in the State of ——, in trust as hereafter mentioned, the receipt whereof is hereby acknowledged, do promise and agree to and with the said —— ——, executors and administrators, that said company shall and
43 will invest said —— principal sum in bank or other stock or real estate, or place and keep the same out at interest on mortgage or other security, at the discretion of the directors, and that they shall and will allow the same income or rate of interest thereon as they shall actually make and receive upon their capital stock paid in and the other property in their possession, including real estate, stocks, notes, bonds, and mortgages, after deducting necessary expenses and charges (excepting office rent and the salaries of the company's officers and servants) and all actual losses, by bad debts or otherwise, not arising from the actual fault of the company or their servants; also one-half of one per cent. per annum for the expenses of the office and the labor, trouble, and responsibility of

investing, taking care of, and managing said trust property; the said principal sum —— received of said —— —— to be invested and managed and the amount of the interest and income thereof ——, to be estimated, ascertained, and determined by the directors of said company in the way and manner provided in the extract from the article on annuities in trust printed at the bottom.

And the said company do further promise and agree to and with the said —— ——, executors and administrators, that they will cause the income and interest of said principal sum, ——, to be computed from the — day of —— next following the date of this instrument up to the thirty-first day of December next ensuing, and the amount thereof to be ascertained and determined in manner aforesaid and to be added to the said principal sum, ——, which total shall constitute a ——, to bear such interest as aforesaid the year next ensuing, and that the said company will, on the last day of that same year and of each and every succeeding year, until —— —— shall —— —— attain the age of —— years, if he so long live, cause the income and interest of the capital for the year last preceding (consisting of ——, said principal sum and the accumulation of interest thereon) to be ascertained as aforesaid and added to said capital, to constitute a capital for the year next ensuing, meaning to allow compound interest at the rate aforesaid upon the said ——, principal sum, until the said —— —— shall attain the age of —— years, if —— so long live, which will be on the — day of ——, one thousand eight hundred and ——.

And that from and after the said — day of —— the aforesaid principal sum, with all the the accumulations thereon to that time, shall constitute a new capital for an annuity in trust, and shall be and continue invested, and the income and interest thereof shall be computed and ascertained in the manner above mentioned,
44 and after deducting the necessary charges, expenses, and losses, and half per cent. for trouble, responsibility, etc., as above provided, the residue thereof shall by said company be paid to the said —— —— yearly during —— natural life in —— equal payments on the — days of —— in each and every year during the natural life of the said —— —— (upon —— separate order and receipt, to be dated on or subsequent to the several days on which the said several payments shall fall due, for her separate use, free from the debts, control, or interference of any husband she now has or may hereafter have, which annuity and —— principal sum are hereby declared to be inalienable by the respective grantees thereof), the first payment to be made on the — day of ——, one thousand eight hundred and —.

And the said company, for the consideration aforesaid, further promise and agree to and with the said ——, executors and administrators, that in sixty days after the decease of the said —— —— they will assign, transfer, and pay the amount of the aforesaid new capital (or such part thereof as shall not have been lost, by bad debts or otherwise, without the actual fault of said company or their servants) and all interest then due thereon at the time of —— death in real estate, stocks, notes, bonds, and mortgages belonging to said

company, all, any, or either of them, at the pleasure and discretion of the directors, at the prices at which —— the same, respectively, shall stand charged in the books of the company at the decease of said —— —— in the way and manner provided in said extract from said article to —— ——.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and twenty—.

—— ——, *Actuary.*

—— ——, *Secretary.*

Extract from the Article on Annuities in Trust Referred to Above.

MEMORANDUM.—This "Extract from the article on annuities in trust," being already in print on pages 5 and 6 of this record, is not here reprinted, reference therefor being made to said pages 5 and 6.

J. G. S., *Clerk.*

45 I. W. W.

No. —. Annuity. (G.)

The Massachusetts Hospital Life Insurance Company, in consideration of —— dollars — cents to them in hand paid by —— ——, of ——, in the State of ——, for the purchase of an annuity on the life of —— ——, of ——, in the State of ——, the same being provided by the —— —— for the said —— ——, do hereby promise and agree to and with the said —— ——, executors, administrators, or assigns, that they will yearly and every year during the natural life of the said —— ——, pay or caused to be paid, on demand, at their office in Boston, to the said —— —— the sum of —— dollars, in —— payments, on the — days of —— in each and every year during the natural life of the said —— ——, the first payment to be made on the —— next; *[and the said company do, moreover, promise and agree to pay to said —— ——, executors, or administrators, a proportionable part of the annuity or yearly sum of —— dollars from such of the said days as shall happen next before the day of the death of the above-named —— —— to the day of —— death, within thirty days next after thirty of —— death].

And it is understood and agreed that this annuity is granted upon the declaration signed by the said —— —— and deposited with the company, stating that the said —— —— was born on the — day of ——, one thousand — hundred and —, and that if the said declaration is not true, then these presents shall be void and the said consideration shall be retained by the said company to their use.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and ——.

—— ——, *Actuary.*

—— ——, *Secretary.*

* Part enclosed in brackets [] is erased.

46 K. W. W.

No. —. Annuity. (M.)

The Massachusetts Hospital Life Insurance Company, in consideration of —— dollars — cents to them in hand paid by —— ——, of ——, in the State of ——, for the purchase of an annuity on the life of —— ——, of ——, in the State of ——, the same being provided by the said —— —— for the said —— ——, which annuity is hereby declared to be inalienable by ——, do hereby promise and agree to and with the said —— ——, executors, administrators, or assigns, that they will yearly and every year during the natural life of the said —— —— pay or cause to be paid, on demand, at their office in Boston, to the said —— —— the sum of —— dollars, in —— payments, on the — days of —— in each and every year during the natural life of the said —— ——, upon —— order and receipt, to be dated on or subsequent to the several days on which the said several payments shall fall due, the first payment to be made on the — day of —— next; and the said company do, moreover, promise and agree to pay to the said —— ——, executors, or administrators, a proportionable part of the said annuity or yearly sum of —— dollars from such of the said days as shall happen next before the day of the death of the above-named —— —— to the day of —— death, within thirty days next after the day of —— death.

And it is understood and agreed that this annuity is granted upon the declaration signed by the said —— —— and deposited with the company, stating that the said —— —— was born on the — day of ——, one thousand — hundred and —, and that if the said declaration is not true, then these presents shall be void and the said consideration shall be retained by the said company to their use.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary, duly empowered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and twenty —.

—— ——, *Actuary.*

—— ——, *Secretary.*

47 L. W. W.

Annuity.

No. —. (F.)

The Massachusetts Hospital Life Insurance Company, in consideration of —— dollars —— cents to them in hand paid by —— ——, of ——, in the State of ——, for the purchase of an annuity on the life of —— ——, of ——, in the State of ——, the same being provided by the said —— —— for the said —— —— for her separate use, free from the debts, control, or interference of any husband she now has or may hereafter have, which annuity is hereby declared to be inalienable by her, do hereby promise and agree to and with the said —— ——, executors, administrators, or assigns, that they will yearly and every year during the natural life of the said —— —— pay or cause to be paid, on demand, at their office in Boston,

to the said —— —— the sum of —— dollars, in —— payments, on the — days of —— in each and every year during the natural life of the said —— ——, upon her separate order and receipt, to be dated on or subsequent to the several days on which the said several payments shall fall due, the first payment to be made on the — day of —— next; and the said company do, moreover, promise and agree to pay to the said —— ——, her executors or administrators, a proportionable part of the said annuity or yearly sum of —— dollars from such of the said days as shall happen next before the day of the death of the above-named —— —— to the day of her death, within thirty days next after the day of her death.

And it is understood and agreed that this annuity is granted upon the declaration signed by the said —— —— and deposited with the company, stating that the said —— —— was born on the — day of ——, one thousand — hundred and —, and that if the said declaration is not true, then these presents shall be void and the said consideration shall be retained by the said company to their use.

In witness whereof the said Massachusetts Hospital Life Insurance Company have, by their actuary and secretary duly empowered for this purpose, signed and delivered this contract this — day of ——, one thousand eight hundred and twenty —.

—— ——, *Actuary.*

—— ——, *Secretary.*

48 The following is the opinion of the court, in accordance with which the decree dismissing the bill of complaint was entered in said cause:

Opinion of the Court. (July 15, 1884.)

NELSON, *J.:*

The clause in the will of Lucius Manlius Sargent directing that certain United States bonds in his possession should be sold and the avails paid over to the Massachusetts Hospital Life Insurance Company in trust to pay the interest thereof annually to the widow of of Lucius Manlius Sargent, Jr., during her life and the principal at her death to his children, is to be constructed with reference to the long-established and well-known usages of the Massachusetts Hos-

49 pital Life Insurance Company and to the forms of investment possible in that institution and conferred full authority upon the executor to pay over the avails of the bonds to the defendant corporation and to receive therefor the contract called in the case an "annuity in trust," and neither the widow of Lucius Manlius Sargent, Jr., nor his children in her lifetime are entitled to have the contract terminated without the consent of the defendant corporation.

50 UNITED STATES OF AMERICA, } *Massachusetts District,* } *ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the district of Massachusetts, within the first judicial circuit,

certify that the foregoing is a true copy of the record of said circuit court and of all proceedings, including the opinion of the court, in the cause in equity entitled George Amory Sargent *et al. v.* Massachusetts Hospital Life Insurance Company *et al.*, in said circuit court determined.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this seventeenth day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

[Seal of the Circuit Court, Massachusetts.]

JOHN G. STETSON, *Clerk.*

51 *Bond to Party on Appeal.*

Know all men by these presents that we, George Amory Sargent, Sullivan Amory Sargent, Ellen Bacon Sargent Matthews, all of Boston, in the State of Massachusetts, and Mary Turner Burgess, wife of Thomas Burgess, of St. Albans, Vermont, as principals, and Nathan Matthews, Jr., as surety, are held and firmly bound unto the Massachusetts Hospital Life Insurance Company, a corporation duly established under the laws of the Commonwealth of Massachusetts, in the full and just sum of five hundred dollars, to be paid to the said Massachusetts Hospital Life Insurance Company, its certain attorneys, successor, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the first day of September, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at a circuit court of the United States within and for the District of Massachusetts, in a suit in equity depending in said court between the said George Amory Sargent, Sullivan Amory Sargent, Ellen Bacon Sargent, and Mary Turner Burgess, *are* complainants, and the said Massachusetts Hospital Life Insurance Company, *are* defendants, decree was rendered against the said complainants, and the said complainants having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said defendants, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said —— shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of—

GEORGE AMORY SARGENT. [L. S.]
SULLIVAN AMORY SARGENT. [L. S.]
ELLEN BACON SARGENT MATTHEWS. [L. S.]
MARY TURNER BURGESS. [L. S.]
NATHAN MATTHEWS, JR. [L. S.]